

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLETUS V. SCHILTZ and DEPARTMENT OF AGRICULTURE,
MEAT & POULTRY INSPECTION PROGRAM, Sioux Center, IA

*Docket No. 03-1703; Submitted on the Record;
Issued September 10, 2003*

DECISION and ORDER

Before COLLEEN DUFFY KIKO, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether appellant has established that he sustained an injury in the performance of duty on January 24, 2003.

On February 12, 2003 appellant, then a 70-year-old meat inspector, filed a traumatic injury claim alleging that on January 24, 2003 he missed a step on the way to the kill floor and fell, catching himself with his left arm. He experienced severe pain in his left shoulder and neck. Appellant initially sought treatment with a chiropractor, but no treatment report was forthcoming.¹

A February 6, 2003 hospital report from Dr. Jeffrey S. Sykes, an internist, noted that appellant had left shoulder discomfort and that there was a question of angina. He opined that appellant could have an outpatient work-up for his left shoulder and he prescribed a nonsteroidal anti-inflammatory medication.

In a February 8, 2003 hospital discharge report, Dr. Sykes diagnosed "left shoulder discomfort, not felt to be angina" and he discussed appellant's work-up results for cardiac involvement.

In a letter dated February 26, 2003, the Office of Workers' Compensation Programs advised appellant that further information was needed to establish his claim. The Office requested that he submit a physician's report containing a diagnosis and an opinion on causal relation.

¹ A chiropractic report was submitted to the record dated December 27, 2002, which predated appellant's alleged injury and, hence, was not probative regarding the alleged injury sustained on January 24, 2003. Also submitted were medical records addressing appellant's cardiac condition, which additionally had no probative value relative to this claim.

On March 5, 2003 the Office received a February 7, 2003 inpatient consultation report from Dr. Thomas P. Jacobson, a Board-certified orthopedic surgeon, who noted appellant's complaints of back and left shoulder and arm pain for the past three weeks, provided the results of a physical examination of appellant's left shoulder and arm and opined that the symptoms were not primarily glenohumeral related, but were probably cervical related. Dr. Jacobson noted that a magnetic resonance imaging (MRI) scan of the shoulder and neck could not be done as appellant had a pacemaker.

Also on March 5, 2003 the Office received a February 10, 2003 computerized tomography (CT) scan of appellant's cervical spine, which was reported as demonstrating facet arthropathy at multiple levels, moderately severe left foraminal stenosis at C2-3 and moderate bilateral foraminal stenosis at C3-4. No incident-related pathology was detected.

On March 6, 2003 the Office received a February 25, 2003 unsigned report dictated by Clifford W. Wilkinson, a physician's assistant, which discussed appellant's left shoulder and arm pain. In an unsigned, undated addendum by Dr. Ralph F. Reeder, Jr., a Board-certified neurosurgeon, noted appellant's history of injury, noted his complaints of neck discomfort with range of motion of the neck, but no radicular complaints, point tenderness over the acromioclavicular area and pain at the acromioclavicular junction with shoulder movement. He opined that he was uncertain if appellant's pain represented radiculopathy versus local trauma to the shoulder. Dr. Reeder injected appellant shoulder with steroids and pain killers and recommended physical therapy.

On March 7, 2003 the Office received a February 12, 2003 note from Dr. Steven J. Meyer, a Board-certified general surgeon, which indicated that appellant was under his care for a condition that did not permit him to return to work at that time.

Also submitted was a March 11, 2003 prescription from Dr. Reeder, which stated: "Remain off work [secondary] to [left] shoulder injury? Possible [left] C7 radiculopathy until seen on April 17, 2003."

By decision dated March 27, 2003, the Office denied appellant's claim, finding that the evidence of record failed to establish that appellant sustained an injury as alleged. The Office found that the incident happened as alleged but that the medical evidence of record did not support that it resulted in a specific injury.

By letter dated April 12, 2003, appellant requested reconsideration of the March 27, 2003 decision.

Appellant submitted an April 17, 2003 physical therapy report signed by a physician's assistant and a physical therapist. He also submitted an April 17, 2003 prescription signed by a physician's assistant.

By decision dated April 29, 2003, the Office denied modification of the March 27, 2003 reconsideration request, finding that the medical evidence of record did not support that appellant sustained an injury, causally related to the January 24, 2003 employment incident. The Office found that neither the physical therapy report, nor the physician's assistant's prescription constituted probative medical evidence.

The Board finds that appellant has failed to establish that he sustained an injury in the performance of duty on January 24, 2003.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are essential elements of each compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

In this case, the Office accepted that appellant experienced the January 24, 2003 employment incident at the time, place and in the manner alleged. However, he has not submitted sufficient medical evidence to establish that the employment incident caused a personal injury.

Dr. Sykes, an internist, noted appellant's left shoulder discomfort and questioned whether angina was involved. He diagnosed "left shoulder discomfort, not felt to be angina." No history of the January 24, 2003 incident was provided. The Board has held that medical evidence lacking a specific diagnosis and an opinion regarding the cause of a condition is of limited probative value.⁵ The report from Dr. Sykes is of diminished probative value.

Appellant was seen in consultation by Dr. Jacobson, who provided the results of a physical examination and opined that appellant's symptoms were not primarily glenohumeral, but were probably cervical related. No specific diagnosis was provided and no opinion on the cause of appellant's symptomatology was noted. Medical evidence lacking a specific diagnosis and an opinion regarding the cause of a condition is of limited probative value.⁶ Therefore, this report from Dr. Jacobson is insufficient to establish appellant's claim.

Appellant was also seen by Mr. Wilkinson, a physician's assistant, who dictated a narrative report. However, this report was not cosigned by a physician. Appellant also later submitted prescriptions signed by Mr. Wilkinson. The Board notes that reports from a physician's assistant are not considered to be probative medical evidence as physician's assistants are not defined as physicians under the Act.⁷ The Board has held that medical evidence must be in the form of a reasoned medical opinion by a qualified physician based on a complete and accurate factual and medical history of the employee whose claim is being

² 5 U.S.C. § 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *See Elaine Pendleton*, *supra* note 3.

⁵ *See generally Michael E. Smith*, 50 ECAB 313 (1999); *Barbara J. Williams*, 40 ECAB 649 (1989).

⁶ *Id.*

⁷ 5 U.S.C. § 8101(2); *see also Curtis L. Lord*, 33 ECAB 1481 (1982).

considered.⁸ Therefore this narrative report and subsequent prescriptions have no probative value and do not establish appellant's claim.

An unsigned addendum to the physician's assistant's report from Dr. Reeder is also not highly probative. Dr. Reeder noted appellant's complaints and opined that he was uncertain if appellant's pain represented radiculopathy versus local trauma to the shoulder. This addendum was of diminished probative value because it was unsigned,⁹ it contained no specific diagnosis or opinion on causal relation¹⁰ and was speculative on causation.¹¹ A later prescription from Dr. Reeder is also of diminished probative value as it referred to appellant's condition as "[left] shoulder injury? [Questionable], which is similarly speculative."¹²

Dr. Meyer only indicated that appellant was under Dr. Meyer's care and was disabled for work. No diagnosis was given and no opinion addressing the cause of his condition was noted. The opinion of a physician supporting causal relation must be one of reasonable medical certainty, supported with affirmative evidence, explained by medical rationale and based on a complete and accurate factual and medical background.¹³ This brief comment was not complete, comprehensive, reasonably medically certain, nor supported by affirmative evidence or medical rationale and, therefore, it had little probative value.

On reconsideration appellant submitted a physical therapist's report cosigned by a physician's assistant, in support of his reconsideration request. The Board notes that this is not probative because neither a physical therapist¹⁴ nor a physician's assistant is considered to be physicians under the Act.¹⁵ Therefore, this report is not considered to be medical evidence and has no probative value in establishing appellant's claim.

As appellant has failed to provide probative medical opinion stating a definitive diagnosis and a rationalized opinion on causal relation, he has failed to establish that the incident on January 24, 2003 caused a medical condition or personal injury.

⁸ *Robert J. Krstyen*, 44 ECAB 227 (1992).

⁹ *See Merton J. Sills*, 39 ECAB 572 (1988) (this addendum, lacking proper identification, should not be considered as probative evidence in support of appellant's claim).

¹⁰ *See supra* note 8.

¹¹ *See Linda I. Sprague*, 48 ECAB 386 (1997); *Jennifer L. Sharp*, 48 ECAB 209 (1996) (medical opinions which are speculative or equivocal in character have little probative value.)

¹² *Id.*; *see also Robert J. Krstyen*, *supra* note 8.

¹³ *Connie Johns*, 44 ECAB 560 (1993).

¹⁴ 5 U.S.C. § 8101(2); *see also Jennifer L. Sharp*, *supra* note 11.

¹⁵ 5 U.S.C. § 8101(2); *see also Curtis L. Lord*, *supra* note 7.

The decisions of the Office of Workers' Compensation Programs dated April 29 and March 27, 2003 are hereby affirmed.

Dated, Washington, DC
September 10, 2003

Colleen Duffy Kiko
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member